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Special Committee on the Situation with regard to the Implementation of the Declaration on the Granting of Independence to Colonial Countries and Peoples

Summary record of the 3rd meeting
Held at Headquarters, New York, on Tuesday, 5 June 2007, at 10 a.m.

Chairperson: Ms. Ferrari ..... (Saint Vincent and the Grenadines)

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The meeting was called to order at 10.20 a.m.

Adoption of the agenda

1. *The agenda was adopted.*

Requests for hearings

2. **The Chairperson** drew attention to aides-memoires 03/07, 04/07 and 05/07 relating to the questions of Gibraltar and Western Sahara and to the Special Committee decision of 12 June 2006 concerning Puerto Rico, respectively. She took it that the Committee wished to accede to those requests.

3. *It was so decided.*

Question of Gibraltar (A/AC.109/2007/12)

4. **The Chairperson** informed the Committee that the delegation of Spain had indicated its wish to participate in the Committee's consideration of the item. In accordance with established practice and if she heard no objection, she would take it that the Committee acceded to that request.

5. **Mr. de Palacio España** (Observer for Spain) said that since the Committee's long-held doctrine with regard to the decolonization of Gibraltar had recently been called into question, he wished to stress that the General Assembly had consistently taken the view that such decolonization must come about not as the result of a unilateral decision by the inhabitants of the Territory, but through a process of negotiation between Spain and the United Kingdom that took into account the interests of the people of Gibraltar.

6. It was being claimed that the process of constitutional modernization in Gibraltar had changed the intrinsic nature of the Territory and that the new constitution provided the inhabitants with a full measure of self-government which met the requirements of General Assembly resolution 1541 (XV). Additionally, it was being claimed that since the new constitution had supposedly been approved by a referendum in an act of self-determination recognized as such by the administering Power, Gibraltar had ceased to be a colony and should be taken off the list of Non-Self-Governing Territories, rendering moot the process of negotiation between the United Kingdom and Spain. Such a position, however, failed to correspond with reality.

7. The constitutional reform and the referendum had originated with the United Kingdom's White Paper of March 1999 entitled "Partnership for Progress and Prosperity: Britain and the Overseas Territories", which had set out to modernize relations with the Non-Self-Governing Territories and promote local autonomy and good governance. They had nothing to do with decolonization, which, moreover, the United Kingdom itself appeared to have ruled out in the case of Gibraltar, owing to the particular circumstance, not applicable to other Territories, that its entitlement to Gibraltar was based on the Treaty of Utrecht.

8. There could be little doubt that the new constitution amounted to no more than a reform of the colonial administration. It had resulted from negotiations between representatives of the administering Power and of the Non-Self-Governing Territory, not a sovereign decision of the people of Gibraltar; it had been promulgated through an "Order-in-Council"; and the administering Power had reserved unto itself considerable powers, among which were the ability unilaterally to revoke the constitution itself, and unilaterally to enforce laws and regulations. As had been clearly expressed by the previous Chairman of the Committee, it was difficult to recognize that a Territory had achieved decolonization under such conditions.

9. Even assuming that a right of self-determination had been applied in the case of Gibraltar and that the principle of territorial integrity did not apply to the dispute over Gibraltar's sovereignty, Gibraltar did not exactly enjoy a "full measure of self-government" under the new constitution. The text that, in the view of the Gibraltar House of Assembly, offered a "full measure of self-government" and had consequently been submitted to the United Kingdom had been substantially shortened in negotiations with the administering Power, with the result that the new constitution in no way met that definition.

10. Another argument put forward by those alleging that Gibraltar had been decolonized was that the referendum approving the new constitution had the status of an act of self-determination, and had been expressly so recognized by the administering Power. As Spain had pointed out on previous occasions, the United Kingdom, in the Despatch of 14 December 2006 from the Secretary of the Foreign and Commonwealth Office to the Governor of Gibraltar, had expressly recognized the validity of article X of the Treaty of Utrecht giving Spain the right of refusal

should the United Kingdom renounce sovereignty over Gibraltar, so that it would be impossible for the Territory to become independent without the consent of Spain. Moreover, it expressly stated that the Constitution "does not diminish British sovereignty over Gibraltar", which will remain a "British Overseas Territory", and that "the United Kingdom shall retain its full international responsibility with respect to this Territory, including its external relations and its defence, and shall continue to be the State member responsible for Gibraltar in the European Union".

11. The people of Gibraltar could hardly be said to enjoy self-determination when they did not possess even a minimal ability to alter the context defining their status at the international level. The administering Power had simply granted Gibraltar greater control over its internal affairs, without affecting its international status, nor its self-determination as understood under international law.

12. Gibraltar remained a dependent Territory, not because Spain wished it so, but because its administering Power had included it in the list of Non-Self-Governing Territories in 1946 and the United Nations had determined that its decolonization would come about through negotiation between Spain and the United Kingdom. At the Caribbean regional seminar in May 2007, the representative of the Government of Gibraltar, speaking supposedly on behalf of the entire population, had claimed that the Territory had been effectively decolonized, but the leader of the main Gibraltarian opposition party had made it clear that no such decolonization had taken place.

13. The Committee should not even consider the proposal to de-list Gibraltar for several reasons: first, because the Territory did not fulfil the criteria that had been established by the United Nations and applied to other Territories; second, because doing so would violate the principle, again established by the United Nations, that the decolonization of Gibraltar had to come about through negotiations between Spain and the United Kingdom, taking into account the interests of the population; and third, but most importantly, because doing so would change the international status of Gibraltar, affecting the historic rights of Spain over the Territory, which his country viewed as completely unacceptable.

14. It was equally unacceptable to separate the process of decolonizing Gibraltar from the dispute between Spain and the United Kingdom over sovereignty. Referring to paragraph 29 of the report of the Pacific regional seminar in Yanuca, Fiji (document A/61/23/Add.1), he said that the phrase "in the process of decolonization, and where there are no disputes over sovereignty, there is no alternative to the principle of self-determination, which is also a fundamental human right" remained fully valid. It clearly showed that United Nations doctrine varied according to whether sovereignty disputes existed or not.

15. Spain, which had acted with extraordinary good faith and patience during the process of decolonization of Gibraltar as well as in the recent process of constitutional reform, had set two conditions on which it would brook no compromise: its rights over the Territory, recognized in article X of the Treaty of Utrecht and in the relevant resolutions and decisions of the United Nations, must be respected; and the international status of Gibraltar must be preserved, so as to avoid any change that would adversely affect those rights. Any attempt unilaterally to alter either condition would constitute an act of the utmost gravity.

16. In conclusion, he stressed that de-listing was not an end in itself, but rather served the sole purpose of confirming the outcome of genuine processes of decolonization. The ultimate goal of the Committee should not simply be to strike names from the list of colonial and dependent Territories, but rather to put an effective end to colonial situations which, in the case of Gibraltar, also endangered the principle of territorial integrity of his country. Spain was prepared at any time to move forward in negotiations with the United Kingdom to decolonize Gibraltar; it was time for the effective implementation of the mandate of the United Nations.

Hearing of representatives of Non-Self-Governing Territories

17. **The Chairperson** said that she had received a communication from the Chief Minister of Gibraltar requesting an opportunity to address the Committee on the question of Gibraltar. She took it that the Committee wished to accede to the request in accordance with its usual procedure.

18. *It was so decided.*

19. **Mr. Caruana** (Chief Minister of Gibraltar) said that under the Charter of the United Nations, the peoples of all Non-Self-Governing Territories,

including Gibraltar, had the inalienable right of self-determination; there was no alternative to that principle under international law, nor could exceptions be made in the case of territorial sovereignty disputes. The Treaty of Utrecht was wholly irrelevant in that regard, and in any event the mere existence of a territorial sovereignty claim by a neighbour (particularly an unadjudicated claim) could not override the fundamental right to self-determination. His Government had frequently invited Spain to refer its claim to the International Court of Justice for an advisory opinion, but Spain had systematically refused to do so. Spain, for its part, persisted in asserting that the Treaty of Utrecht gave it rights which it alleged were incompatible with the decolonization of Gibraltar through self-determination, meaning that Gibraltar could only be decolonized by trading Gibraltar's sovereignty from the so-called administering Power to Spain as the territorial claimant. The two positions were therefore irreconcilable; the sovereignty of Gibraltar was at the disposal only of the people of Gibraltar.

20. He called on the Committee to take a clear position on whether, as had been declared in General Assembly resolution 2625 (XXV), any status freely determined by the people of a Territory in an act of self-determination was a valid model of decolonization, and whether the Committee could accept other realistic alternative decolonization models for the 16 remaining Non-Self-Governing Territories. While supporting the Committee's insistence on ensuring that the apparent will of a people was indeed genuinely and freely determined, he could not accept a dogmatic insistence by the Committee on imposing its doctrines on the freely expressed will of the peoples of the Territories.

21. He was heartened by the Chairperson's own recent recognition that different Territories had different needs, expectations and concerns, and that it was incumbent on the Committee to recognize and find ways to deal with that reality on a case-by-case basis, always keeping as a paramount consideration the wishes and well-being of the peoples of the Territories. The people of Gibraltar did not want independence, but rather valued their sovereignty and constitutional links with Great Britain and wished to retain them in the modern non-colonial relationship. He acknowledged that some members of the Committee might not understand how that could be so, but urged them not to doubt that it was indeed the genuine, freely expressed and informed will of the people of Gibraltar.

22. Independence, in any case, was not the clear-cut concept that it had been at the time the Committee's decolonization doctrines had been established; for example, if Spain as a member State of the European Union could surrender to that organization much of its control over its own national affairs and still be seen as independent, why should Gibraltar still be considered a colony when it had chosen a constitutional relationship with the United Kingdom that gave that country less power over Gibraltar's affairs than Spain had surrendered to the European Union? The new Constitution minimized the few remaining powers that were not exercisable by the elected Government of Gibraltar, and it had been approved and accepted by the people of Gibraltar by means of a referendum in November 2006. The United Kingdom, for its part, had recognized and accepted that the referendum, organized by the Government of Gibraltar and unanimously approved by the Gibraltar Parliament, constituted an act of self-determination in the context of the Charter of the United Nations. Spain's insinuation that the referendum might have been illegal was preposterous, and the United Kingdom had informed Spain that the referendum was a lawful and proper expression of the free will of the people of Gibraltar.

23. The new Constitution maximized Gibraltar's self-government in all areas except defence, external affairs and internal security. The old power of United Kingdom ministers to veto legislation passed by the Gibraltar Parliament had been abolished, so that the so-called "administering Power", the United Kingdom, administered absolutely nothing in Gibraltar. Jersey, Guernsey and the Isle of Man were not part of the United Kingdom and were not regarded as colonies, although as with Gibraltar, the United Kingdom remained responsible for their external affairs and defence. The Queen, as sovereign of Gibraltar and not of the United Kingdom, retained residual power to make laws for Gibraltar, but never did so without consultation with the Government of Gibraltar.

24. The new Constitution was thus clearly not that of a sovereign independent State, but reflected the will of the people of Gibraltar in creating a modern, non-colonial relationship with the United Kingdom. While Spain claimed that the new Constitution was irrelevant to the decolonization of Gibraltar because it

dealt only with internal Government organization and institutions, the United Kingdom and Gibraltar were in agreement that the Constitution established a new, modern and mature relationship between them. It only remained for the United Nations to de-list Gibraltar, although in Gibraltar's view the United Nations criteria for doing so were unrealistic and inappropriate in that they appeared to rule out de-listing wherever the ex-administering Power retained any sort of reserve legislative power, regardless of the circumstances of use and real nature of that power. However, he reiterated that the United Kingdom had no right or power to legislate in Gibraltar, and that Gibraltar had ceased to be a colony and was not considered by its ex-administering Power to be a colony.

25. In its attempts to undermine the significance and effect of the new Constitution, Spain had argued that the United Kingdom continued to retain power in Gibraltar via "the administering authorities in the person of the Governor". Such statements demonstrated a clear lack of understanding by Spain of the constitutional model and of the legal relationship it created. Under the Constitution, the Government of the United Kingdom had no powers, whether legislative or executive, in Gibraltar. As in much of the British Commonwealth, the monarch was the Head of State and the source of all executive and legislative authority in Gibraltar, but fulfilled that function separately for each of the countries or Territories recognizing him or her as Head of State, including Gibraltar. The powers of the Governor under the Constitution of Gibraltar were vested in him or her as representative of the monarch in her capacity as Queen of Gibraltar, and not in her capacity as Queen of the United Kingdom. The Governor was not the representative of the administering Power but of the Queen as Gibraltar's Head of State. Thus the Government of the United Kingdom had no power or authority in Gibraltar under the Constitution to instruct the Governor; such power and authority could only be exercised by the Queen. Those fundamental legal principles, which had been firmly upheld in 2005 by the highest court in the United Kingdom, were binding in every respect and reflected the true nature of the constitutional relationship between Gibraltar and the United Kingdom. The Committee's de-listing criteria could not be applied to Gibraltar without an understanding of that relationship.

26. Spain's argument that Gibraltar must still be a colony because of the powers exercised by the Governor or by the administering Power was based on a failure to understand the constitutional status of the Queen and the Governor and the relationship between the United Kingdom and its overseas Territories. For example, the Spanish representative at the 2007 Caribbean regional seminar had referred to the Governor as the highest representative of the administering Power in connection with the Governor's involvement in a controversy over removing the Chief Justice of Gibraltar from office. Yet in Gibraltar, as in any democratic country, the authority to remove judges from office was vested in the Head of State. As the representative of the Queen, the Head of State of Gibraltar, the Governor was quite properly involved in the case, and was in no way acting on behalf of the administering Power.

27. A number of recommendations and conclusions contained in the draft report of the Caribbean regional seminar as at 24 May 2007 were said not to apply to Territories where there was a dispute over sovereignty. It was also indicated in the draft report that the recommendations of the seminar were expressions of the will of the people of the Territories. No people of any Territories had expressed the view, however, that the people of Gibraltar, a Territory subject to a dispute over sovereignty, should be denied self-determination, the ability to participate in the development of work programmes, electoral assistance or visits by the Committee. Those views had been inserted into the draft report at the bidding of interested Member States and their allies in the drafting committee at the seminar. Such views implied that the people of Gibraltar did not enjoy the right to self-determination and that the Committee would never be able to de-list Gibraltar until Spain's territorial integrity as at 1704 was restored by the transfer of sovereignty of Gibraltar to Spain against the wishes of Gibraltarians.

28. His Government regarded the establishment of the trilateral forum for dialogue between the Governments of Gibraltar, Spain and the United Kingdom as one of its most important achievements. Each of the three Governments took part in the forum on an equal footing. The agenda was open, and nothing could be decided unless all three Governments agreed. The forum was working well, as had been demonstrated when it had produced its first set of mutually beneficial agreements in September 2006

relating to aviation, cross-border traffic and other issues. There were no ongoing bilateral negotiations between the United Kingdom and Spain about the sovereignty of Gibraltar. Indeed, his Government had a formal commitment from the United Kingdom that it would not enter into any such negotiations with Spain without the agreement of Gibraltar. The sovereignty of Gibraltar could never be disposed of without the consent of its people. An acknowledgement by Spain of that inescapable fact would contribute much to Gibraltar's serenity.

29. Lastly, he wished to note that although the Committee would be hearing the views of the opposition party in Gibraltar, it had not heard the views of the opposition in Spain. It was appropriate for people in democratic societies to be represented at international forums by their elected Government rather than the opposition.

Hearing of petitioners

30. *At the invitation of the Chairman, Mr. Bossano (Leader of the Opposition, Gibraltar), took a place at the Committee table.*

31. **Mr. Bossano** (Leader of the Opposition, Gibraltar) recalled that, without any discussion, the words "where there are no disputes over sovereignty" had been inserted in the conclusions and recommendations concerning the right to self-determination contained in the Committee's report for 2004 (A/59/23, para. 39 (12)) and had been repeated in subsequent reports, even though members of the Committee had taken a clear position that self-determination was the only way to bring about decolonization and nothing had happened to justify a change in that position. Spain's attempt to introduce a new doctrine at the 2007 Caribbean regional seminar was in flagrant breach of the Charter and of international law. The Committee must uphold the right of peoples to self-determination, regardless of any disputes over sovereignty, as reaffirmed by the World Conference on Human Rights, the Human Rights Committee and the Committee on Economic, Social and Cultural Rights. The Committee had the obligation to defend the people of Gibraltar as a people under colonial rule with the right to determine their future status.

32. It was for the Committee, not the United Kingdom or Spain, to determine whether the 2006 referendum in Gibraltar was a realization of that right and whether, under the 2007 Constitution, Gibraltar was no longer a Non-Self-Governing Territory. In its 1999 White Paper entitled "Partnership for Progress and Prosperity: Britain and the Overseas Territories", the Government of the United Kingdom had not described the constitutional modernization of British Non-Self-Governing Territories as a process of decolonization. Furthermore, as recent discussions had shown, none of those Territories considered themselves to be engaged in such a process. In addition, there was an inconsistency between the claim by the United Kingdom that its establishment of modern and mature relationships with its Overseas Territories was not based on colonialism and its acceptance that it continued to have the legal obligation to report on those Territories under Article 73 *e* of the Charter. He looked to the Committee to decide whether the 2006 referendum and the new Constitution indeed constituted self-government. Once it had determined that a full measure of self-government had been achieved, de-listing would ensue.

33. As for Spain, its criticisms of Gibraltar's new Constitution and the 2006 referendum had not been constructive or well-meaning. Spain continued to insist that Gibraltar's constitutional status as a Non-Self-Governing Territory must remain unchanged until it passed under Spanish sovereignty. The trilateral forum for dialogue helped to promote cooperation among all interested parties, including the people of Gibraltar. Spain should not be under any illusion, however, that improvements in cross-border cooperation increased in any way the prospects for a return to the Brussels Process; Gibraltar's attainment of full self-government would never be a matter for negotiation with Spain.

34. In conclusion, the right of peoples to self-determination could not be constrained, much less denied, by third parties to disputes over territorial sovereignty. The Brussels Process was over and would not be reactivated. The Committee must continue to monitor Gibraltar's development towards the achievement of self-determination, and should produce a checklist of what was required.

35. *Mr. Bossano withdrew.*

The meeting rose at 11.35 a.m.